

6p

H

IN

S P E E C H

OF

HON. E. S. DARGAN, OF ALABAMA,

ON

THE OREGON QUESTION.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, THURSDAY, FEBRUARY 5, 1846.

WASHINGTON:
BLAIR & RIVES, PRINTERS.
1846.

NWP
479.51
D217

The Resol
Affairs,
Britain c
terminat
abrogate
consider

Mr. DA
follows:

Mr. CH
House, it
should not
bate. I ne
marked ou
gy for it, s
under deb
I have lis
regret that
the notice
urge the ad
under disc
should be
form, or of
the consec
settled by
convention
notice be
American
Oregon is
notice are
is clearly
like a torn
crushing
thought, f
a notice in
be given.
year, let t
one, the
own the
when so
and war
perchance
To avoid
it is the v
time neit
territory
is the pos
claim all
come from
will main
assert titl
Mr. Cha
nor will
ican peop
although

THE OREGON QUESTION.

The Resolution from the Committee on Foreign Affairs, requiring the President to notify Great Britain of the intention of the United States to terminate the joint occupancy of Oregon, and to abrogate the convention of 1827, being under consideration in Committee of the Whole—

Mr. DARGAN obtained the floor, and spoke as follows:

Mr. CHAIRMAN: When I took my seat in this House, it was with the resolution that my voice should not be heard in it on any question of debate. I now depart from that course which I had marked out for myself; but I will render no apology for it, save only, that my views on the question under debate seem, to me at least, to be peculiar. I have listened to the debate with attention, and regret that I cannot agree with those who opposed the notice on the one hand, nor with those who urge the adoption of the particular resolution now under discussion. I believe a notice of some kind should be given; for if we fail to give notice in some form, or of some character, I will ask, what will be the consequence? Suppose the difficulties be not settled by negotiation, and notice to determine the convention be not given: will not the question of notice become a political hobby? Will not the American people be taught to believe the whole of Oregon is ours? and that those who oppose the notice are afraid to assert their rights to that which is clearly their own? Mr. Chairman, it would, like a tornado, sweep from Maine to Louisiana, crushing all opposition before it. I therefore thought, from the beginning of this discussion, that a notice in some shape, or in some form, ought to be given. If we fail to give this notice but for a year, let the question be discussed as a political one, the public mind will be convinced that we own the territory to 54° 40' north latitude; and when so convinced, they will be roused to arms; and war must decide the contest, unless England, perchance, should yield up to us all we demand. To avoid the evils of war is my wish, and I think it is the wish of my constituents; but at the same time neither I nor they would yield one foot of territory clearly and indisputably our own. This is the position occupied by the people of Alabama: claim all that is clearly our own; and if a contest come from such an assertion of their rights, they will maintain and defend them; but by no means assert title to more than belongs to us. I am not, Mr. Chairman, the advocate of the British title, nor will I be; but before this House and the American people I will declare what are our rights; and although high functionaries may say our right is

perfect to the whole territory, I will give my opinion as to *their* extent. And if we now will inform the American people of the extent of our rights, and claim nothing but that which belongs to us, the question will be settled without a conflict, for England will admit them.

Let us claim nothing save that which is ours according to the principles of justice and international law. Here we can maintain our claim. The question will be settled, the honor of the nation untarnished, and peace preserved. We are urged to pass the resolution in its simple, unqualified form; but connected as it must be with the positive assertion of the President that the whole of Oregon is ours up to 54° 40', it will be an endorsement of that declaration to the American people. Shall we make this endorsement, or not? If we do it, what will be the consequence? It will be folly to believe that anything else than war will follow. England is in possession of a part of the territory; she has men and arms there; she claims rights there, and has rights there. And although I will not ascribe to her more courage and firmness than belong to the rest of the human family, I will ask gentlemen to point me to that page in history where men in possession of their rights, with arms in their hands, have yielded them upon the demand of another, unless this demand is based on admitted right and the admitted laws of nations. No people will ever do it until forced at the point of the sword. Now if we wish to settle this question without difficulty, without bloodshed, let us make our claim to that portion of the territory which belongs to us; let us admit the question as one of negotiation and settlement. Let us, in one word, declare the line below which England has no right, and below which we will yield her none; and my word for it, there will be no war with England about Oregon.

This brings me to our title. It is said we have two titles—one by discovery, and one by purchase from Spain. But the title by discovery is to the valley of the Columbia; and the same principles that give us the valley of the Columbia, give the British Government title to the country drained by *Frazer's river*. If, therefore, the title of both Governments depended on discovery, both Governments have rights. It is pretty well admitted on all sides that if we had title by discovery only, the 49th degree of latitude would be the fair line of separation between us. I have heard no one announce, nor can it be said with reason or truth, that, independent of our Spanish title, we own the whole. But we invoke the aid of our Spanish title to overreach the title of Great Britain by discovery of *Frazer's river*, and her possession consequent

on such discovery. Her rights to this river and the country drained by its waters, are precisely such as we possess in regard to the Columbia and the country drained by it; unless we can defeat her right with the title of Spain, which we now possess. It is said that the Spanish title is older in point of time, as Spain first discovered this territory and actually took possession of it; and, being older, it is therefore superior. I may well admit that the Spanish title is older than the title of Great Britain, and we have it; but this title is subject, in our hands, to all the conditions and all encumbrances imposed on it by the act of Spain before she passed it to us; and before we can override the title of Great Britain with this our Spanish title, we must see that Spain had imposed no conditions or encumbrances on this title. For suppose the owner in fee first mortgage his estate and then sell to another in fee: the purchaser in fee takes the estate subject to the mortgage, subject to this act prior to the sale in fee. Thus, too, we hold the title of Spain, subject to all her acts done in relation to the title before we acquired it. And this brings us to look into the Nootka Sound convention of 1790.

But it is said that the war between Great Britain and Spain in 1796 annulled and abrogated this treaty. This, Mr. Chairman, is a proposition which strikes me as a novel and remarkable one.

Treaties, if I understand them, may be fulfilled perfectly and completely on the act of signing and approval, or they may be (if I may be allowed the definition) continuing in their character—that is, to be fulfilled from time to time as occasion may require; as, for instance, commercial treaties, which may stipulate that certain goods shall pay certain duties as they may be imported, or that a commercial vessel shall salute a man-of-war, &c.; or they may be compounded of the two—one clause may contain a perfect grant of land, another clause may contain a commercial regulation. But I ask, if a perfect vested right in land be conveyed by a treaty of this compound character, if a subsequent war would divest this perfect and absolute right? If so, my friend from Missouri should tremble at the idea of war with France, for a declaration of war would make him a French subject. I would tremble at a war with Spain, for I should thereby become a subject of the Spanish crown. It is seen at once that such a proposition is absurd. It is now necessary to inquire into the Nootka Sound convention; the 3d article is as follows:

"In order to strengthen the bonds of friendship, and preserve in future a perfect harmony and good understanding between the two contracting parties, it is agreed, that their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific ocean or in the South seas, or in landing on the coasts of said seas in places not already occupied, for the purpose of carrying on their commerce, or of making settlements there; the whole subject, nevertheless, to the following restrictions specified in the three following articles," &c.

"Or of making settlements." Note this.

Permit me to ask, what has divested England of this right to make settlements under this convention? and why is not the Spanish title now charged with this encumbrance as it was in 1790? Why, I ask, is it not charged with the right in England to make settlements in any part of the Oregon territory?

In the exercise of this right, her citizens have gone there and erected their homes. When were they bound to depart? When they had made settlements, and consecrated the soil as their homes, without any restriction or limitation as to time—on what principles of law can they be compelled to abandon their homes or surrender the soil? But the gentleman from Indiana [Mr. OWEN] came to the conclusion that there was a restriction on this right contained in the 3d article, to be found in the 5th article. I will now call the attention of the committee to these restrictions. The first restriction is contained in the 4th article, which reads as follows:

"His Britannic Majesty engages to take the most effectual measures to prevent the navigation and fishery of his subjects in the Pacific ocean or in the South seas from being made a pretext for illicit trade with the Spanish settlements; and with this view it is moreover stipulated, that the British subjects shall not navigate and carry on their fishery in said seas within the space of ten sea leagues from any part of the coast already occupied by Spain."

This, Mr. Chairman, is the first restriction. Does this restriction go to negative or control the right of English subjects to make settlements on any part of the territory not occupied by Spain? It is sufficient merely to say it does not.

But it is supposed that the 5th article controls this right; but the construction I put on it is entirely different. The article is as follows:

"As well in the places to be restored to the British subjects by virtue of the 1st article, as in all other parts of the northwestern coasts of North America, as well as the islands adjacent, situate to the north of the parts of said coast already occupied by Spain, wherever the subjects of either of the two Powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation."

This article, Mr. Chairman, so far from being a restriction on the 3d article, is simply an enlargement of the 4th. The 4th article is: You (the British) shall not trade with the Spanish subjects. The 5th article is: You may trade with the Spanish subjects in those settlements hereafter made by the Spaniards north of their present settlements. It is, therefore, simply an enlargement of the restriction contained in the 4th article. If this be the right construction, the right to make settlements is unrestrained; and I ask, if the British subjects had the right to settle any part of the territory not previously occupied, and there make their permanent homes without anything being said as to the time when they should abandon them,—I ask—in the name of common sense, I appeal to all who have some idea of the legal effect of treaties—what influence can a war have on this right?

Am I to be told at this day, and are we to sanction the doctrine, that when nations enter into a contract, which has been executed, and rights vested in perpetuity under the contract, that a subsequent war will divest those rights—annul this contract? If so, it is a new era in the history of international law; a new doctrine, which would be found to be destructive of the best interests of

nations. or anywhere

We hold title, if given with the right that their territory in erect their with this one title of ment of C and we w are no lon nor can w am willing the Amer them; bu claims to tract and trine that treaty sti merely b use.

Now f seems to have con ferred it c offers, w With wh the whole without C ain has r It has be to the w to differ rights ad

Mr. C the notice of our ri portion would d to war r right to south of but for v pare ou war bey will not let me s world v God th war by and I t own. is clear nation: sion; i just, a land on

I see this co accom as to yield us? right t cannot ernme cover views

er citizens have
s. When were
had made settle-
eir homes, with-
as to time—on
be compelled to
the soil? But
OWEN] came to
triction on this
be found in the
attention of the
the first restric-
which reads as

to take the most
navigation and
the ocean or in
a pretext for
settlements; and
ulated, that the
te and carry on
the space of ten
the coast already

first restriction.
e or control the
settlements on
occupied by Spain?
is not.
article controls
nt on it is entire-
ly:

pred to the Brit-
article, as in all
coasts of North
acent, situate to
st already occu-
settlements since
hereafter make
ll have free ac-
de without any

ar from being a
ply an enlarge-
You (the Brit-
subjects. The
Spanish sub-
made by the
ements. It is,
the restriction
is be the right
ements is unre-
jects had the
not previous-
manent homes
the time when
in the name
ho have some
what influence

re we to sanc-
enter into a
nd rights vest-
t, that a sub-
—annul this
the history of
which would
nt interests of

nations. No such doctrine can be maintained here or anywhere else.

We hold, then, Mr. Chairman, the Spanish title, if gentlemen see fit to rely on it, but charged with the right of the British Government, to wit: that their subjects may make settlements in the territory in places not already occupied, and there erect their homes. This Spanish title is charged with this right. But whether we claim by the one title or by the other, or by both, the Government of Great Britain has rights in the territory, and we wish to make a division of the soil. We are no longer willing to remain in joint occupancy, nor can we assert title to the whole territory. I am willing to assert for my constituents, and for the American people, every right that belongs to them; but no power on earth can make me assert claims to rights, when those are negated by contract and by law. Nor will I advocate the doctrine that we must seize upon territory contrary to treaty stipulations, contrary to the laws of nations, merely because we wish to appropriate it to our use.

Now for the division line. The 49th degree seems to me to be equitable and just. I think we have committed ourselves to this line: we have offered it once, twice—nay, three times. By these offers, we have admitted England had claims. With what faith, I ask, can we now assert title to the whole? Can we, then, go for this resolution, without even qualifying it, to show that Great Britain has rights which are the subject of negotiation? It has been asserted by the Executive that our title to the whole is perfect. In this, I am compelled to differ with him. I cannot shut my eyes to the rights adverse to our own.

Mr. Chairman, I would prefer a resolution giving the notice, with a distinct assertion of the extent of our rights; that is, that we will never yield any portion of the territory south of latitude 49. If we would do this, depend on it England would not go to war for any territory south of that line. Our right to it is best. I would never yield one foot south of it, be the consequences what they may; but for us to assert our title to the whole—to prepare ourselves to maintain this title—will produce war beyond all possible doubt. And although I will not undertake to describe the horrors of war, let me say, if a conflict ensues, the whole civilized world will feel the shock. I trust in the name of God that this country will never be involved in a war by asserting title to that which is not ours; and I trust we will never fear to assert title to our own. Nor will the assertions of title to that which is clearly ours ever involve us in a war with any nation; or if it does, it will not be a war of aggression; it will be one of right, our quarrel will be just, and we should have nothing to fear from England or from the world.

I see the necessity of giving notice to determine this convention, to prevent bloodshed; but let us accompany it with a clear and distinct declaration as to the extent of our rights. We would not yield our rights to England: will she yield hers to us? Although I believe the Executive thinks our right to the whole perfect, for he has so said, I cannot agree with him; the conduct of our Government is opposed to his views—the rights of discovery and the construction of treaties oppose his views. His opinions, however, will have a pow-

erful effect on the public mind; we should check it; we should show to our fellow-citizens the extent of their rights, and I would with pleasure go for the notice with this declaration of the extent of our rights.

Mr. Chairman, I would even go for a notice that would admit that Great Britain had an interest in the territory the subject-matter of negotiation, for this would be to disabuse the public mind. It would be tantamount to saying Great Britain has interest in Oregon; but to deny that she has, and so to teach the public that all is ours, must, beyond all doubt, produce war. True it is, that the giving of this notice is the exercise of a mere conventional right, and within itself not a cause of war; but he is not entitled to the name of a prudent counsellor who will exercise this right merely because he may do so, without regard to the consequences. We should look to the consequences. Give the notice in this simple, unqualified form, and the question must then be settled, either by negotiation or by the sword. The President says negotiation is ended—that it cannot be so settled. Then the only alternative left is war; a war, too, under the assertion of title to the whole. We could not be justified before mankind; we could not elicit their sympathies; we should be considered the aggressors. But let us declare, and declare truly, the extent of our rights. Our title is before the world, the title of England before them—and we should be sustained by the nations of the earth. England herself, seeing that we claimed nothing but that which is our own, would yield to our claim without resort to arms. The question is one of moment; the lives of thousands depend, or may depend, upon our action. Let us not act rashly, nor hazard the lives of our fellow-beings in asserting a doubtful title; yea, in asserting a title to the whole, when, beyond all doubt, we have no exclusive title. But should we give this notice, with a view to settle the question by negotiation, by asserting title only to that which is ours, or by admitting that Great Britain had interests which were the subject of compromise, and she should refuse to negotiate, and allow us our rights, the responsibility, yea, the evils of the war would be hers. But let us claim only our rights, and there will be no danger of war, or of its horrors.

I see, Mr. Chairman, I have a few minutes more. I will reply to one suggestion I have heard expressed, "that the tree of liberty flourished best when moistened with blood." This is not the tree of liberty I admire; and when the tree of liberty planted by our fathers requires the blood of their descendants to give it nourishment, I say, cut it down, tear it up by the roots, and cast it from us. But, Mr. Chairman, the tree of liberty I admire flourishes best in peace; yea, when the rights of all are regarded and respected, then will its boughs extend and give protection to all, and under it all will be content—all happy. To protect this, sir, I would say, let blood be shed; nor should the ruthless hand of tyranny pluck one bough from the trunk. Permit me to say, that my constituents would freely shed their blood ere this tree should be injured. I will not pass any encomiums on my constituents, nor speak of their martial spirit. But if a war should come, let it come as it will. For good, sufficient, or insufficient cause, I do not think we shall ask to borrow fortitude of our friends

to bear us up against its misfortunes. No, sir, we will gather on our beach, beside our native rocks, against which the mad waves of "Old Ocean" have beat for ages past without impression made, and still they stand and cast them back on her own bosom. So would we stand and drive back our foes, and make them seek the quiet of their passions in their own homes.

ack on her own
drive back our
et of their pas-